

STATE OF TENNESSEE

Office of the Attorney General



RECEIVED

2006 SEP 29 PM 6:19

T.R.A. DOCKET ROOM

**ANDY D. BENNETT**  
CHIEF DEPUTY ATTORNEY GENERAL

**LUCY HONEY HAYNES**  
ASSOCIATE CHIEF DEPUTY  
ATTORNEY GENERAL

**PAUL G. SUMMERS**  
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS  
P.O. BOX 20207  
NASHVILLE, TN 37202

**MICHAEL E. MOORE**  
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER  
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491  
FACSIMILE 615-741-2009

September 29, 2006

The Honorable Sara Kyle, Chairman  
The Honorable Pat Miller, Director  
The Honorable Ron Jones, Director  
The Honorable Eddie Roberson, Director  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Re: Proposed Telecommunications Rules Implementing  
Toll-Free County-Wide Calling, Chapter 1220-4-12

Dear Chairman Kyle and Directors Miller, Jones, and Roberson:

Pursuant to your submission, I have reviewed in accordance with Tenn. Code Ann. § 4-5-211 the proposed Telecommunications Rules Implementing Toll-Free County-Wide Calling. I have determined that I cannot approve these proposed rules in their present form because they do not provide for or identify a means for compensating carriers that are required to complete long-distance calls across LATA boundaries, but within the same county. Without such a mechanism, which is not apparent in these proposed rules, such a requirement in certain instances would constitute a "taking" of services without just compensation, in violation of the Due Process Clause of the United States Constitution and Article I, Section 21, of the Tennessee Constitution.

In spite of the laudable intent of these rules and their design to effectuate Tenn. Code Ann. § 65-21-114, their implementation in many circumstances would appear to require interLATA telephone carriers to render a service free of charge. In *AT&T v. Cochran*, 1995 WL 256662 (May 3, 1995), the Court of Appeals struck down as unconstitutional an Order of the former Public Service Commission that attempted to

accomplish the same goal in virtually the same manner. As pointed out in Op. Tenn. Att'y Gen. No. 01-115 (July 20, 2001), the enactment of Tenn. Code Ann. § 65-21-114 did not alter this basic constitutional analysis. Copies of this decision and opinion are attached. The mention of a fair rate of return in proposed Rule 1220-4-12-.02(3) is not sufficient to remedy this problem, as the Court of Appeals discussed in the *AT&T* decision.

In order fully to implement toll-free county-wide calling in Tennessee (without a modification of LATA boundaries at the federal level), it would be necessary for the Authority to provide or identify compensation for the services provided by interLATA carriers which complete such calls. While the proposed rules contain many appropriate features that provide some of the mechanics for toll-free county-wide calling, we are not assured by the rules themselves or the information available to us that they satisfy the constitutional requirements.

I regret that I cannot approve these rules in the form in which they have been submitted to this Office. I am therefore returning the unsigned rules to you with this letter. This Office will be happy to work further with the TRA to develop a means of establishing toll-free county-wide calling that will fully implement T.C.A. § 65-21-114 and meet the constitutional requirements.

Please contact this Office if you have any additional questions or would like to discuss this matter further.

Sincerely,

A handwritten signature in cursive script that reads "Paul G. Summers". The signature is written in dark ink and includes a small flourish at the end.

PAUL G. SUMMERS  
Attorney General

PGS/CLL:dh

Enclosures

cc: Richard Collier, Esq.  
T.R.A. General Counsel

Westlaw.

Not Reported in S.W.2d

Page 1

Not Reported in S.W.2d, 1995 WL 256662 (Tenn.Ct.App.)  
**(Cite as: Not Reported in S.W.2d)**

**H**

Only the Westlaw citation is currently available.  
 SEE COURT OF APPEALS RULES 11 AND 12  
 Court of Appeals of Tennessee.  
**A T & T COMMUNICATIONS OF THE SOUTH  
 CENTRAL STATES, INC., MCI  
 Telecommunications Corporation and Sprint  
 Communications Company, L. P.,  
 Petitioners/Appellants,**  
 v.  
**Frank COCHRAN, Chairman, Keith Bissell,  
 Commissioner, and Steve Hewlett, Commissioner  
 Constituting the Tennessee Public Service  
 Commission, Respondents/Appellees.  
 No. 01A01-9409-BC-00427.**

May 3, 1995.  
 Rehearing Denied June 7, 1995.

Appeals of Tennessee Middle Section at Nashville.

Van Sanford and John Knox Walkup of Gullett,  
 Sanford, Robinson and Martin, Nashville, TN.  
 Jeanne Moran, Nashville, TN.  
 Paul S. Davidson of Stokes & Bartholomew,  
 Nashville, TN.  
 T.G. Pappas of Bass, Berry & Sims, Nashville, TN.  
 Charles L. Howorth, Nashville, TN.

**OPINION****TODD.**

\*1 The captioned petitioners have petitioned this Court pursuant to T.R.A.P. Rule 12 for review of a final order of the Tennessee Public Service Commission (hereafter "Commission") requiring petitioners to render free service to a particular group of telephone users in respect to a particular class of telephone calls.

Petitioners do not operate local telephone exchanges which are designated by the acronym, "L.A.T.A." Petitioners are designated "inter LATA"

or "IXC's" because they furnish long distance telephone connections between local exchanges. Petitioners compete for the patronage of local telephone subscribers who designate their choice among available long distance carriers. The long distance carriers are compensated by billing the local customer through the local exchange.

Not all Tennessee counties are served by county-wide local exchanges. In each of twelve counties of the State there are at least two local exchanges; so that, in these counties, some intra-county telephone calls require the service of inter LATA, or long distance connection between exchanges.

The Commission has adopted a policy of eliminating long distance charges on telephone calls within a single county. Pursuant to this policy, on October 13, 1993, the Commission served upon petitioners an order captioned:

In Re: Show Cause Proceeding Against Certified ICX's to Provide Toll Free, County-Wide Calling

Following responses and hearing, the Commission entered its order providing:

2. All IXC's (long distance carriers) providing intrastate service in Tennessee will provide inter LATA intra-county calling toll free to all Tennessee customers effective October 15, 1994;....

In their petition to this Court for review, petitioners present the following issues:

1. Whether the Commission followed the proper standard or criteria in construing its statutory powers.
2. Whether the Commission's Final Order, requiring the petitioners to provide toll-free service to a particular category of customers on a geographic basis, is within the statutory powers of the Commission.
3. Whether the Commission's Final Order

Not Reported in S.W.2d

Page 2

Not Reported in S.W.2d, 1995 WL 256662 (Tenn.Ct.App.)  
 (Cite as: Not Reported in S.W.2d)

constitutes a taking of the particular services or property of the petitioners, without compensation, in violation of Article I, Section 21 of the Tennessee Constitution and the Fifth Amendment to the United States Constitution made applicable to the States through the Fourteenth Amendment.

4. Whether the Commission's Final Order deprives the petitioners of due process of law in violation of Article I, Section 8 of the Tennessee Constitution and the Fourteenth Amendment to the United States Constitution.

5. Whether the Commission adopted the policies it seeks to implement in this proceeding in accordance with governing procedural law.

Petitioners summarize their argument:

1. The powers of the Commission are only those conferred by statute as limited by the Federal and State Constitutions.

2. The Commission has no power to compel petitioners to furnish free service under the circumstances of this case.

\*2 3. The action of the Commission is invalid because it is based upon incorrect "show cause" procedure rather than rule-making procedure.

T.C.A. Section 65-5-201 authorizes the Commission to fix "just and reasonable rates" for utility service, but no statutory provision is cited or found for requiring a utility to furnish its service to a particular customer without charge.

The Commission points out that its present tariffs require local telephone exchanges to furnish free directory service to its subscribers, but the relation of a local exchange with its subscribers is completely different from that of a long distance carrier and its intermittent customers. For a lump sum monthly charge, the exchange furnishes a package of services including directory service. Long distance telephone companies charge on a call by call basis, whereby they are paid for each call made. A more reasonable comparison would be with a public pay station telephone service.

The Commission asserts that it has the power to "distribute the load" of utility costs by lowering the rates charged one class of customers because of profits derived from another class of customers. Whatever the merits of this argument, the statute does not authorize the requirement of service without any charge to one class of customers even though the loss to the utility may be replaced by overcharging another class of customers.

The direction of petitioners to render free long distance service between exchanges serving customers in a single county is not authorized by statute.

Article I, Section 21 of the Constitution of Tennessee reads as follows:

Sec. 21. No man's services or property taken without consent or compensation.-That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor.

The protection of this provision extends to corporations as well as to individuals. *Harbison v. Knoxville Iron Co.*, 103 Tenn. 421, 53 S.W. 955 (1899); 183 U.S. 13, 22 S.Ct. 1, 46 L.Ed. 55 (1901); *Home Tel. Co. v. People's Tel. & Tel. Co.*, 125 Tenn. 270, 141 S.W. 845 (1911).

The order of the Commission demands "particular service." In *Henley v. State*, 98 Tenn. 665, 41 S.W. 352 (1897), the Supreme Court said:

Particular services must mean peculiar services; limited services; not ordinary or general services of an individual. It is not an easy matter to draw the distinction between particular and ordinary services in every instance, still some general rules may be given to mark the line. It seems clear that ordinary services, such as may be required of all citizens, or officials, by general or valid special laws, are not particular services. A single illustration may suffice: A physician cannot be required to give his time and services and skill and scientific knowledge in making an examination to qualify him to speak as an expert witness. If, however, the same physician may have already made an examination and come

Not Reported in S.W.2d

Page 3

Not Reported in S.W.2d, 1995 WL 256662 (Tenn.Ct.App.)  
(Cite as: Not Reported in S.W.2d)

into the possession of facts material to be disclosed to attain justice and administer the law, he may be required to testify to them as any other witness may.

\*3 *Henley*, Id. at 684.

The order of the Commission “demands” or “takes” property, not for public use, but for private use of an individual at his demand. The utility is entitled to some compensation from the member of the public receiving the benefit of the demand. The right to compensation is “property” which may not be taken without just compensation. *Southern Bell Tel. & Tel. Co. v. Tenn. Pub. Serv. Comm.*, 202 Tenn. 465, 304 S.W.2d 640 (1957).

The Constitution requires “just compensation” for services or property taken by public authority. Just compensation means compensation from the public treasury or, in the case of utilities, from the member of the public receiving the benefit. It does not mean forcing a person not benefitted to pay the compensation for the benefitted non-payer.

The action of the Commission also violates the Fifth Amendment of the Constitution of the United States which is made applicable to the states by the Fourteenth Amendment. *Dolan v. City of Tygard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994).

Because of the statutory and constitutional infirmities of the order of the Commission, it is unnecessary to discuss or determine the procedural issue which is pretermitted.

There are other constitutional and authorized means of accomplishing the ends sought by the Commission, but it is not within the province of this Court to render advisory opinions.

The order of the Commission is reversed and vacated. Costs of this appeal are taxed against the Commission. The cause is remanded to the Commission for such further proceedings as may be necessary and appropriate.

Reversed, Vacated and Remanded.

Tenn.App.,1995.

AT&T Communications of South Cent. States, Inc. v. Cochran

Not Reported in S.W.2d, 1995 WL 256662 (Tenn.Ct.App.)

END OF DOCUMENT

STATE OF TENNESSEE  
OFFICE OF THE  
ATTORNEY GENERAL  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

July 20, 2001

Opinion No. 01-115

Constitutionality of Tenn. Code Ann. § 65-21-114 Concerning Countywide Telephone Calling

QUESTION

Is Tenn. Code Ann. § 65-21-114, in requiring all telephone calls placed between two points in the same county to be toll-free, constitutional as applied to interexchange or long distance carriers?

OPINION

While Tenn. Code Ann. § 65-21-114 is constitutional in most of its applications, it would be unconstitutional to apply this statute to a long distance telephone carrier under circumstances where the carrier does not receive reasonable remuneration for the service it is required to provide.

ANALYSIS

The instant request concerns the constitutionality of Tenn. Code Ann. § 65-21-114, which provides that

(a) Any telephone call made between two (2) points in the same county in Tennessee shall be classified as toll-free and shall not be billed to any customer.

(b) This section shall apply to all companies or entities providing telephone service in this state as public utilities, including, but not limited to, telephone companies regulated by the Tennessee regulatory authority. However, this section does not apply to any telephone company which is prohibited by federal law from providing countywide service in a particular county.

(c) Nothing in this section is intended to modify or repeal the rate-making and telephone regulatory authority of the authority or the right of telephone companies to earn a fair rate of return.

The thrust of this statute is to require that all telephone calls made between two points within the same county in Tennessee "shall be classified as toll-free and shall not be billed to any customer." The statute goes on to recognize in subsections (b) and (c) that federal law may prohibit countywide service by some carriers in some areas, and that telephone providers have the right to earn a fair rate of return. The focus of the statute is to make all intracounty calls a part of the local telephone service that is included in subscribers' basic billing and not charged on a toll basis. The latter parts of the statute seem to recognize that this may present certain problems, but the statute fails to address those problems in such a way as to render it fully enforceable.

The underlying principle in analyzing your question is that the State cannot require a telephone company, or any other business for that matter, to render its services for free. That would constitute a "taking" in violation of Article I, §21 of the Tennessee Constitution, as well as the fifth and fourteenth amendments of the United States Constitution. *See Southern Bell Telephone and Telegraph Co. v. Tennessee Public Service Commission*, 202 Tenn. 465, 304 S.W.2d 640 (1957); *Henley v. State*, 98 Tenn. 665, 41 S.W. 352 (1897); *Dolan v. City of Tygard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994).

There is no problem in enforcing this statute in areas where a subscriber's local exchange carrier can complete a call to all areas of the county. In such instances, the cost of providing countywide service can be included in the basic billing rate as a required service. This is the sort of regulation commonly required by the Tennessee Regulatory Authority. Thus in most areas of the State, Tenn. Code Ann. § 65-21-114 is effective.

Complications arise, however, because approximately a dozen Tennessee counties are divided by LATA (Local Access and Transport Area) boundaries, across which the local exchange carriers that were part of the Bell system generally are not authorized to carry calls. Federal law, as part of the break-up of the telephone monopoly in the 1980's, has prohibited the Bell companies (such as BellSouth in Tennessee) from carrying calls across these LATA boundaries. *See generally MCI Telecommunications Corp. v. Taylor*, 914 S.W.2d 519 (Tenn. Ct. App. 1995). Thus in some counties in Tennessee, the local exchange carrier cannot complete calls to certain other parts of the county. This is a peculiarity caused by the fact that LATA boundaries do not necessarily follow county lines.

As a result, in parts of these affected counties, a long distance carrier must be involved in completing a call to certain areas within the county. Since long distance calls are billed on a toll basis, the requirement of § 65-21-114 that such calls be toll free would mean that the long distance carrier would be required to complete these calls for no remuneration whatsoever. Many subscribers making calls within the county but across a LATA boundary would have no other long distance calls during a billing period, resulting in their long distance carrier's being required by this statute to render a service for free. This produces the constitutional problems with the statute.

The Honorable Jerry Cooper  
Page 3

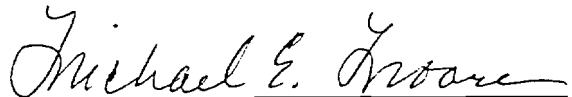
The Court of Appeals reached exactly this conclusion in *AT&T Communications of the South Central States, Inc. v. Cochran*, Tenn. Ct. of Apps., Middle Section, Apr. 26, 1995, a copy of which was enclosed with this request. This decision addressed a requirement imposed by the Public Service Commission before the statute in question was passed, but the enactment of Tenn. Code Ann. § 65-21-114 does not alter the constitutional analysis, for the substance of the statutory requirement is the same as that of the old P.S.C. order. The Court's opinion does note that there are permissible means of accomplishing countywide calling, but the statute in question does not provide for those mechanisms.

The bottom line is that to implement toll-free countywide calling for all customers in the counties divided by LATA boundaries, some mechanism would have to be devised to provide compensation for the long distance telephone carriers for completing such calls. The General Assembly could establish such a mechanism, or the Tennessee Regulatory Authority could do so. It is conceivable that the T.R.A. might identify the necessary compensation as a part of some remuneration that such companies already receive. The more plausible course, however, is to impose a charge to reimburse such carriers for providing toll-free service across LATA boundaries.

In conclusion, Tenn. Code Ann. § 65-21-114 is effective in requiring toll-free countywide calling in most instances, but it cannot be fully enforced in counties divided by LATA boundaries until compensation is provided from some source through some mechanism for the long distance carriers that complete such calls. This, of course, runs the risk of imposing an entirely new regulatory scheme and accompanying fees to support countywide calling. As the Court of Appeals has observed, until a compensating mechanism is provided or identified, it would violate the takings provisions of the Tennessee and federal constitutions to require long distance telephone companies to provide such a toll-free service.



PAUL G. SUMMERS  
Attorney General



MICHAEL E. MOORE  
Solicitor General



CHARLES L. LEWIS  
Deputy Attorney General



Rulemaking Hearing Rules  
of the  
Tennessee Regulatory Authority

Chapter 1220-4-12  
Telecommunications Rule Implementing Toll-Free County-Wide Calling

Substance of Proposed New Rule

Table of Contents

1220-4-12-.01	Definitions
1220-4-12-.02	Scope and Purpose of Rule
1220-4-12-.03	Methodological Requirements
1220-4-12-.04	Database Administration
1220-4-12-.05	Access Charges Prohibited
1220-4-12-.06	Penalty Provision

1220-4-12-.01 Definitions

- (1) “Access charge” shall mean the charge for providing access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.
- (2) “Authority” refers to the Tennessee Regulatory Authority
- (3) “CLEC” shall mean competitive local exchange carrier or competing Telecommunications Service Provider as defined in Tenn. Code Ann. § 65-4-101(1).
- (4) “County-wide or intra-county calls” shall mean any landline calls made between two (2) points in the same county in Tennessee.
- (5) “Database administrator” refers to the entity designated by the Authority to manage the Tax Area Rate database.
- (6) “ILEC” shall mean incumbent local exchange carrier and shall be defined consistent with Tenn. Code Ann. § 65-4-101(4).
- (7) “IXC” shall mean inter-exchange carrier as defined in Tenn. Code Ann. § 65-4-101(6) (I).
- (8) “Landline calls” shall mean calls transported over a telecommunications landline facility but does not include wireless.
- (9) “Landline facility” shall mean a conventional telephone facility including twisted-pair lines, carrier facilities and microwave radio facilities for supporting a conventional

telephone channel not including satellite or mobile telephone lines using radio transmissions.

- (10) "Reseller" shall mean any Telecommunications Service Provider providing telecommunications service to an end user by resale of all or part of the facilities of another carrier.
- (11) "TAR" shall mean the statewide Tax Area Rate database that identifies a local service provider's telephone number and the county in which the end user of that telephone number is physically located. This information is used to determine where the call physically originates and terminates.
- (12) "Telephone Cooperative" shall mean any telephone company operating in Tennessee under the authority of Tenn. Code Ann. Chapter 29.
- (13) "Telecommunications Service Provider" means any incumbent local exchange telephone company or certificated individual or entity, or individual or entity operating pursuant to the approval by the Authority of a franchise within Tenn. Code Ann. § 65-4-207(b), authorized by law to provide, and offering or providing for hire, any telecommunications service, telephone service, telegraph service, paging service, or communications service similar to such services unless otherwise exempted from this definition by state or federal law (Tenn. Code Ann. § 65-4-101(c)).
- (14) "Virtual NXX" shall mean NXX codes that are central office codes that correspond with a particular geographic area that is assigned to a customer located in a different geographic area.
- (15) "Wireless provider" shall mean a provider of telecommunications services such as cellular telephone, paging or personal communications for which all or part of the communications pathway between users includes transmission through radio links.

1220-4-12-.02 Scope and Purpose of Rule

- (1) It is established that there is a public interest need that any telephone call made between two (2) points in the same county in Tennessee shall be classified as toll-free and shall not be billed to any customer. This public interest need mandates that all landline Telecommunications Service Providers including but not limited to ILECs, CLECs, IXCs, Resellers and Telephone Cooperatives not bill for such calls when the call is transported over landline facilities.
- (2) This Chapter shall not apply to the following:
  - (a) calls from wireless telephone service providers,
  - (b) Payphone line service,
  - (c) Outward Wide Area Telecommunications Service (WATS)
  - (d) 800-type service,
  - (e) quoted charges,
  - (f) foreign exchange and remote call forwarding services when such calls are being forwarded to a location outside the county of the originating call, including numbers assigned to a virtual exchange, unless the telephone number is physically located in the same county as the originating telephone number.
- (3) Any telecommunications service provider may file a petition with the Authority for relief if it believes that complying with this Chapter will prevent it from achieving a fair rate of return.

1220-4-12-.03 Methodological Requirements

- (1) Telecommunications service providers providing local service in Tennessee utilizing their own telephone number assignments are required to participate in the Tax Area Rate (TAR) database maintained by the Authority, or its designee. Prior to billing a customer toll charges in Tennessee all Telecommunications Service Providers shall use current information from the TAR database to ensure that the calling customer is not billed toll charges for any telephone call that originates and terminates within the same county. Telecommunications Service Providers seeking to comply with Tenn. Code Ann. § 65-21-114 by alternative means may seek a waiver from the Authority from participating in the TAR database or from using the TAR database as its method of complying with the requirements of Tenn. Code Ann. § 65-21-114.

1220-4-12-.04 Database Administration

- (1) The Authority shall ensure that the administration of the TAR database is provided in a fair, efficient and economical manner and that each Telecommunications Service Provider at the time of its application for authority to operate in Tennessee is made aware of its responsibility to participate in the database.
  - (a) The Authority shall designate the administrator of the TAR database for a term not to exceed ten (10) years. The administrator is required to give the Authority a one (1) year's notice of its intent to cease providing the service.
- (2) Information required by the database administrator from Telecommunications Service Provider shall be limited to data necessary to determine the county in which the end users of the telephone numbers assigned are located.
- (3) The database administrator and all telecommunications service providers with access to the database have a duty to protect the confidentiality of the customer information contained in the database and shall use the information only for the purposes of implementing these rules.
- (4) Within thirty (30) days of the effective date of these rules the database administrator shall make available to all Telecommunication Service Providers operational guidelines (guidelines) for the administration of the database. Telecommunications Service Providers shall have sixty (60) days from the effective date of this Rule Chapter to comply with the guidelines.
  - (a) The database administrator shall notify the Authority and Telecommunications Service Providers participating in the TAR database at least thirty (30) days in advance of the effective date of any changes to the guidelines.
- (5) It shall be the responsibility of Telecommunications Service Providers to submit accurate data to the database administrator including the TAR Code for the county in which the end user of that telephone number is physically located. Data errors detected by the database administrator shall be returned to the submitting Telecommunications Service Provider for corrections and resubmission within two (2) business days.
- (6) Each Telecommunications Service Provider shall submit its updated information to the TAR database administrator no less than twice a month as specified by the guidelines to ensure accuracy of the data.

- (7) Each Telecommunications Service Provider shall receive from the database administrator a twice monthly update as specified by the guidelines and update its systems with all new additions and deletions.
- (8) The database administrator shall provide to the Authority reports on the operations of the database, as requested.
- (9) Any Telecommunications Service Provider may file a complaint with the Authority regarding any aspect of the operation of the TAR database.

1220-4-12-.05 Access Charges Prohibited

- (1) Originating and terminating access charges shall not apply to county-wide calls. Any carrier that is billed access charges for these calls shall obtain prompt credit for these charges from the billing carrier upon presenting sufficient documentation.

1220-4-12-.06 Penalty Provision

- (1) Violators of this Chapter shall be subject to a civil penalty, payable to the Authority, pursuant to Tenn. Code Ann. § 65-4-120.
- (2) Violations shall be calculated in a liberal manner in order to protect the public interest and deter similar violations.

*Authority: T.C.A. §§ 65-2-102, 65-4-104, 65-4-201.*

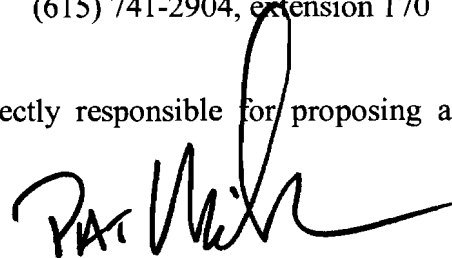
Legal Contact and/or party who will approve final copy for publication:

J. Richard Collier, General Counsel  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243  
(615) 741-2904, extension 170

Contact for disk acquisition:

J. Richard Collier, General Counsel  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243  
(615) 741-2904, extension 170

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

A handwritten signature in black ink, appearing to read "Pat Miller", is written over a horizontal line.

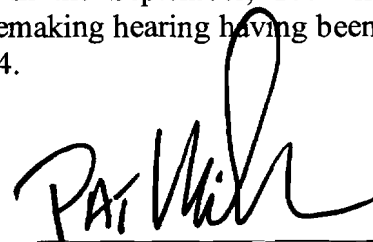
Pat Miller, Chairman

The roll-call vote by the Tennessee Regulatory Authority on these rulemaking hearing rules was as follows:

	Aye	No	Abstain
Pat Miller, Chairman	<u>X</u>	<u>          </u>	<u>          </u>
Ron Jones, Director	<u>X</u>	<u>          </u>	<u>          </u>
Sara Kyle, Director	<u>X</u>	<u>          </u>	<u>          </u>
Deborah Taylor Tate, Director	<u>X</u>	<u>          </u>	<u>          </u>


I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Regulatory Authority on the 28<sup>th</sup> of February, 2005.

Further, I certify that the provisions of Tenn. Code Ann. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking has been filed in the Department of State on the 31<sup>st</sup> day of August, 2004, and such notice of rulemaking hearing having been published in the September, 2004 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 9<sup>th</sup> day of November, 2004.



Pat Miller, Chairman

Subscribed and sworn to before me this the 11th day of April, 2005.

  
Notary Public

My commission expires on the 28th day of May, 2006.

All rulemaking hearing rules provided for herein have been examined by the Attorney General & Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5, Section 211.

*Not Approved*

\_\_\_\_\_  
Paul G. Summers  
Attorney General & Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, and will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Riley C. Darnell  
Secretary of State

By: \_\_\_\_\_